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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

NO._____

UNITED STATES OF AMERICA AND
COMMISSIONER OF INTERNAL REVENUE
PETITIONERS

v.

ANNE GOYNE MITCHELL,
FRANCES ANGELLO, ET AL

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

RESPONDENT ANNE GOYNE MITCHELL'S BRIEF IN OPPOSITION

Respondent, Anne Goyne Mitchell, opposes the petition for a writ of certiorari filed by the United States of America and Commissioner of Internal Revenue.

Question Presented

Is a Louisiana ex-wife in community separately

liable for taxes on the income of the community when she neither filed a return nor accepted the community upon its dissolution.

Statement

Except for petitioners' characterization of the Fifth Circuit's holding, respondent concurs in the petitioners' statement of the case. The court held not that Mrs. Mitchell's renunciation of the community retroactively relieved her of the tax liability but that she never became liable for the tax on the community's income (petitioners' Appendix A-1, pp. 17-27).

Argument

Mitchell does not conflict with this court's holding in Poe v. Seaborn, 282 U.S. 101 (1930) Goodell v. Koch, 282 U.S. 118 (1930), Hopkins v. Bacon, 282 U.S. 122 (1930), Bender v. Pfaff, 282 U.S. 127 (1930), or United States v. Malcolm,

282 U.S. 792 (1930). It is a case involving a small class of unfortunate persons. Not only does it not constitute a threat to the collection of taxes in community property states, it provides a legal and rational basis for the collection of taxes on Louisiana community income.

1. Bender v. Pfaff (supra), Poe v. Seaborn (supra), Goodell v. Koch (supra), Hopkins v. Bacon (supra), and United States v. Malcolm (supra) decided nothing more than that under the laws of the states involved, including Louisiana, the wife had a sufficient interest in the community so as to entitle the husband and the wife to make separate returns, each of one-half of the community income. All of these cases were decided under the provisions of the Revenue Acts of 1926 and 1928, both of which required a husband and wife living together to each make a

return or make a single joint return of their aggregate income.[1]

Neither United States v. Malcolm (supra) nor any of the other cases decided by this court required the wife in community to file a tax return of community income. Malcolm (supra) involved a husband and wife, each of whom had filed a return in which they included one-half of the community's income. The question before this court was not must each of them file a return? - they had already done that. The question was may they file separate returns?

Two questions were certified from the Ninth Circuit:

> "(1) *** must the entire community income be returned and the income tax thereon be paid by the husband?"

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[1]Revenue Act of 1926, section 223(b); Revenue Act of 1928, section 51(b), (Appendix, infra).

> "(2) Has the wife, under section 161(a) of the Civil Code of California, such an interest in the community income that she should separately report and pay tax on one-half of such income?"

This court answered the first question in the negative and the second in the affirmative.

Thus, the case held that the taxpayers in Malcolm were correct; the entire community income did not have to be included in one return, but if it was not, the husband and wife should each report and pay tax on one-half of such income.

United States v. Malcolm (supra) therefore stands for the same proposition that Poe v. Seaborn (supra), Goodell v. Koch (supra), Hopkins v. Bacon (supra), and Bender v. Pfaff (supra) stand for: The whole of the community income is not required to be reported as the income of one of the spouses in community;

both the husband and the wife are entitled to report one-half of the income in separate returns.

The Fifth Circuit held in Mitchell that the community, in Louisiana, is an entity which owns its income and owes its debts and that the wife owns a present vested interest in the community's property only in the sense that she owns a present vested interest in the community. The court held that the obligation to pay taxes is an obligation of the community which, by Louisiana law falls upon both the community and the husband, the wife being liable only if she assumes liability by filing a tax return or accepting a transfer of property upon the dissolution of the community.

Thus, the ultimate effect of the Mitchell decision is that the wife in community may, but is

not required to, return the community's income in either a joint or separate return, but if she does not, the husband is individually liable for all of the tax on the community's income.

The case does not hold that the renunciation of the community retroactively relieved Mrs. Mitchell of any tax liabilities. The case holds that Mrs. Mitchell never incurred any tax liabilities because the only way that a Louisiana wife in community could incur such liabilities would be by filing a return during the existence of the community or by accepting the community at its termination. The act of renunciation merely put the possibility of acceptance at rest.

That Mitchell does not turn on the act of renunciation is made clear by the Fifth Circuit's per curiam decision in Carmen Ramos v. Commissioner of Internal Revenue, No. 28939,

5th Cir., July 13, 1970 (Appendix, infra), which the petitioners apparently overlooked. No renunciation was made in that case, but the Fifth Circuit relying on Mitchell, held the ex-wife in community not to be liable for taxes on community income when she had not assumed liability by filing a return. The court said:

* * *

> "Judge Dyer concluded for the Mitchell and Angello panel that the community was solely liable for community debts and that a surviving widow was not obligated to pay such debts from her separate property. Texas law is identical to Louisiana law in all respects material to our consideration. * * *"

2. This decision does not present the government with any collection problems; instead it solves problems which have heretofore been swept under the rug.

Under the law of Louisiana, property of the

community cannot be reached for the separate debt of the wife although it can be reached for the separate debt of the husband.[2] Thus, if the wife were separately liable for taxes on

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[2]Although the community is not liable for pre-nuptial debts of either spouse, La. Civ. Code art. 2403 (Appendix, infra); U. S. F. &G v. Green, 252 La. 227, 210 So. 2d 328 (1968), the community is liable for all debts of the husband whether separate or community, arising during the existence of the community. Poindexter v. Louisiana & A. Ry. Co., 170 La. 521, 128 So. 297 (1930). Except in the few instances where the wife can independently bind the community and where she, acting as agent for the community under the husband's authorization, can bind the community, the community is not liable for her separate debts arising during marriage. Fernandez v. Weiner, 326 U.S. 340 (1945); Brantley v. Clarkson, 217 La. 425, 46 So. 2d 614 (1950); McCauley v. Lafleur, 205 So. 2d 458 (La. App. 3d Cir. 1967). Conversely, the wife's separate estate is not liable for community debts during the community except where she intentionally binds herself for them personally. La. R.S. 9:103 (1950) (Appendix, infra); Smith v. Viser, 117 So. 2d 673, 674 (La. App. 2d Cir. 1960); Stuffler v. Puckett, 30 La. Ann. 811 (1878) Personal Finance, Inc. v. Sims, 148 So. 2d 176 (La. App. 1st Cir. 1962); Furniture Company v. Carroll, 86 So. 2d 715 (La. App. 1st Cir. 1956).

community income, the taxes could not be collected during the existence of the community unless the wife had separate property. Mitchell holds that taxes on income of a Louisiana community is a debt of that community which can be collected from both the community's property and the husband's separate property. Consequently, the government is placed in a vastly superior collection position after Mitchell than before, at least as far as Louisiana is concerned.

Almost all cases such as Mitchell involve divorced or separated wives[3] whom the government contends are liable for the tax on one-half of the income earned by their husbands prior to divorce or during the separation period. Very

[3]Carmen Ramos v. Commissioner of Internal Revenue, No. 28939, 5th Cir., July 13, 1970 (Appendix, infra); Ella E. Harrold, 22 T.C. 625 (1954), Rev., 232 F. 2d 527 (9th Cir. 1956); Hunt v. Commissioner, 22 T.C. 228 (1954).

rarely do these ex-wives have the means either to obtain the information with which to file returns or pay the taxes on their husband's or ex-husband's earnings, even though such earnings are or were property of the community.

It is only in situations, such as in Mitchell, where the wife either has separate property or acquires property after termination of the community, that the possibility of collection exists.

Respondent seriously doubts that the decision in Mitchell threatens the collection of any significant amount of revenue.

Conclusion

For the reasons set forth above, the petition for certiorari should be denied.

Respectfully submitted.

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Appendix

Revenue Act of 1926:

Individual Returns

* * * *

Sec. 223. (b) If a husband and wife living together have an aggregate net income for the taxable year of $3,500 or over, or an aggregate gross income for such year of $5,000 or over —

(1) Each shall make such a return, or

(2) The income of each shall be included in a single joint return, in which case the tax shall be computed on the aggregate income.

* * * *

Revenue Act of 1928:

Part V - Returns and Payment of Tax

§ 51. Individual Returns

* * * *

(b) Husband and Wife. If a husband and wife living together have an aggregate net income for the taxable year of $3,500 or over, or an aggregate gross income for such year of $5,000 or over —

(1) Each shall make such a return, or

(2) The income of each shall be included in a single joint return, in which case the tax shall be computed on the aggregate income.

* * * *

U. S. COURT OF APPEALS
FIFTH CIRCUIT

CARMEN RAMOS,
Petitioner-Appellant

NO. 28939

v.

COMMISSIONER OF
INTERNAL REVENUE,
Respondent-Appellee

JULY 13, 1970

Before GODBOLD, SIMPSON and MORGAN,
Circuit Judges

PER CURIAM:

We review here a decision of the Tax Court of the United States affirming a deficiency assessed by the Commissioner in the amount of $123.00 against Mrs. Carmen Ramos for 1964. The Commissioner's deficiency assessment arose from his determination based upon Texas community property laws that the appellant is liable for 1964 income tax on one-half of the money earned by her husband during that

year plus one-half of her meager salary as a domestic servant during 1964. We reverse upon the authority of two recent decisions of this Court involving the Louisiana community property laws in similar situations.[1]

Following her marriage to Matias Ramos Hernandez (hereinafter Matias) in 1957 Carmen lived with him as husband and wife in Texas until August 1963 when he deserted her and left for parts unknown. Her attempts to divorce him in 1964 were unsuccessful because he could not be located for service of process. The marriage was eventually legally terminated in January 1966. In 1964 Matias earned $2,525.75 and

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[1]Angello v. Metropolitan Life Insurance Co. and United States, 5 Cir. 1970, ____F. 2d____ [26 AFTR 2d 70-5183] [No. 28154, June 22, 1970]; Mitchell, et al. v. United States, 5 Cir. 1970, ____F. 2d____ [26 AFTR 2d 70-5127] [No. 28163, June 23, 1970].

Carmen earned $580.00. He contributed nothing toward her support, she received no part of his salary and of course had no control over the disposition of it.

The Commissioner determined that Carmen had taxable income in 1964 of $1,552.87 consisting of one-half of her wages plus one-half of Matias' wages. The Commissioner's theory, accepted by the Tax Court, is that in a community property state such as Texas a wife has a present vested interest in one-half the earnings of her husband and is therefore liable for income tax upon that one-half interest. The theory is that the community continues until the marriage is formally dissolved even though the parties are separated and neither actually shares in the other's income. See Christine K. Hill,

32 T.C. 254 (1959).[2] The Tax Court commented that "although the laws of community property states often work to the advantage of taxpayers domiciled therein, this is one example of the very severe hardships those laws can occasionally engender".

The Tax Court also found to be without merit Carmen's further contention that she was entitled to a bad debt deduction under Section 166(a)(1) equal to her community shares of Matias' wages and entered its decision and order for deficiency in the amount of $123.00.

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[2]The Tax Court quoted Christine K. Hill, supra, at 257 as to the "inexorabel provisions of Texas community property law":

"Under Texas law, the wife is the declared owner of one-half of the community income, the control of which is given to the husband. Thus, any argument based on constructive receipt, or lack thereof, by the wife has no merit. Regardless of actual or constructive receipt of community income by the wife she is the owner of one-half of such income and is taxable on it."

This Court recently rejected this theory in reversing the Tax Court with reference to analogous provisions of Louisiana community property law. Angello and Mitchell, supra. Judge Dyer concluded for the Mitchell and Angello panel that the community was solely liable for community debts and that a surviving widow was not obligated to pay such debts from her separate property. Texas law is identical to Louisiana law in all respects material to our consideration. Anderson v. Bundick, Tex. Civ. App. 1952, 245 S.W. 2d 318; Sargeant v. Sargeant, 1929, 118 Tex. 343, 15 S.W. 2d 589; Security Nat. Bank of Wichita Falls v. Allen, Tex. Civ. App. 1924, 261 S.W. 1057; Leatherwood v. Arnold, 1866, 66 Tex. 414, 1 S.W. 173.

The decision and order of the Tax Court is reversed and remanded with directions to enter

judgment for the appellant taxpayer Carmen Ramos.

Reversed and Remanded.

SIMPSON, Circuit Judge, specially concurring:

I concur because I agree that Angello and Mitchell are controlling. I adhere to the views which I expressed in dissent to the decisions in those two cases that they should have been decided against the taxpayers.